

## 5. ADMINISTRATIVE ENFORCEMENT PROCEDURE

5.01. Purpose and Intent. Subdivision 1. As authorized by the Rochester Home Rule Charter, Section 6.00, subd. 3, the Rochester Common Council enacts chapter 5 of the Rochester Code of Ordinances ("Code") to provide an administrative enforcement procedure for the enforcement of certain violations of the Code.

Subd. 2. The Common Council finds that there is a need for alternative methods of enforcing the Code. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of city ordinance regulations. The higher burden of proof and the potential for incarceration are not appropriate for most ordinance regulations. The criminal justice system does not always regard Code violations as being important. Accordingly, the Common Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for a Code violation.

5.02. Alternative Method of Enforcement. This administrative enforcement procedure seeks to gain compliance with certain provisions of the Code prior to any formal criminal or civil court action. The administrative hearing process provided for in this chapter shall be in addition to any other legal or equitable remedy available to the City for Code violations. However, if a determination is made by the hearing officer that a violation did not occur, the City may not proceed with criminal prosecution for the same act or conduct.

5.03. Code Provisions That Are Administrative Offenses. Subdivision 1. A violation of the those provisions of the Code listed in subdivision 2 shall be an administrative offense that may be subject to the administrative citation, administrative hearing and civil fine process set forth in this chapter.

Subd. 2. Administrative Offenses:

- A. Alcoholic Beverage Regulations (chapter 125A)
- B. Animal Regulations (chapter 106A)
- C. Noise Regulations (section 85.10)
- D. Park Regulations (chapter 45B)
- E. Peace Plaza Regulations (chapter 45D)
- F. Public Nuisances (chapter 40)
- G. Refuse Collection and Disposal (chapter 141)

H. Smoking Regulations (sections 85.26 and 85.27)

I. Gambling Regulations (chapter 107)

(3960, 3/15/10; 3967, 5/17/10)

5.04. General Provisions. Subdivision 1. Each day a violation exists constitutes a separate offense.

Subd. 2. An administrative offense may be subject to a civil fine not to exceed the amount of the maximum fine allowed if each Code violation had been prosecuted as a misdemeanor. Except as permitted by state law, civil fines may not be imposed for Code violations that prohibit the same conduct that is classified as a crime or petty misdemeanor in Minnesota Statutes, chapters 168, 169, 169A, 170 and 171, or for any other violation of a state law that preempts local regulations on the same topic.

Subd. 3. The Common Council must adopt by resolution a schedule of civil fines for offenses initiated by administrative citation.

Subd. 4. The City Administrator may adopt procedures consistent with this chapter in administering the administrative enforcement program.

5.05. Administrative Citation. Subdivision 1. A person listed in subdivision 3 of this section, upon the reasonable belief that an administrative offense listed in section 5.02, subd. 2 has occurred, may serve on the violator an administrative citation. The citation must be issued in person or by mail to the person responsible for the violation or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time and nature of the offense, the name of the person issuing the citation, the amount of the schedule penalty and the manner for paying the penalty or appealing the citation. The City may use the Administrative Traffic Citation form approved by the State of Minnesota under Minn. Stat. §169.999, subd. 3 as an Administrative Citation under this section.

Subd. 2. Within ten calendar days after issuance of the administrative citation, the person responsible for the violation must either pay the scheduled administrative civil fine or request a hearing. Payment of the civil fine constitutes admission of the violation.

Subd. 3. The following persons are authorized to issue administrative citations:

- A. Police Officers
- B. Community Service Officers
- C. Animal Control Officers
- D. Persons authorized by City Administrator and Common Council

5.06. Administrative Hearing. Subdivision. 1. Hearing Officers. The City Administrator shall periodically approve a list of lawyers from which the City Administrator shall randomly select as a hearing officer to hear a matter for which a hearing is requested. The person requesting a hearing shall have the right to request, no later than five days before the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the City Administrator. A subsequent request shall be directed to the assigned hearing officer who will decide whether he or she cannot fairly and objectively review the case. If such a finding is made, the hearing officer shall remove himself or herself from the case, and the City Administrator shall assign another hearing officer. The hearing officer is not a judicial officer, but is a public officer as defined by Minnesota Statutes, section 609.415. The hearing officer shall not be a current or former City employee.

Subd. 2. Notice of Hearing and Continuances. Notice of the hearing must be served in person or by mail on the person responsible for the violation at least ten days in advance of the scheduled hearing, unless a shorter time is accepted by all parties. The City and the violator shall be each entitled to only one continuance of a scheduled hearing.

Subd. 3. Payment for Cost of Hearing. The cost of the hearing shall be apportioned equally between the person requesting the hearing and the City. At the time the request for hearing is made, the City shall provide the requestor with an estimate of the requesting party's share of that cost. The requestor must provide payment of that estimated cost to the City before the City will schedule a hearing. The hearing officer has the authority to reduce the requesting person's share of the costs where that person can demonstrate indigence by clear and convincing evidence. Proof of indigence can be demonstrated by the person's receipt of means tested government benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the hearing officer for determination of the amount of the prepayment in advance of the hearing. In all cases, where the person requesting the hearing does not attend and fails to request a continuance of the hearing at least 48 hours in advance of the scheduled hearing, all costs incurred by the City attributable to the requested hearing shall be charged to the requesting party and deducted from any prepayment made.

Subd. 4. Hearing Procedures. At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The hearing officer shall tape record the hearing, receive testimony and exhibits, and maintain a full record of the hearing. The hearing officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

Subd. 5. Authority of Hearing Officer. The hearing officer shall have the authority to:

- A. Determine whether a violation occurred;
- B. Dismiss the administrative citation;
- C. Impose the scheduled civil fine; or

- D. Reduce or waive a scheduled civil fine either unconditionally or upon compliance with appropriate conditions.

Subd. 6. Imposition of Civil Fine by Hearing Officer. When imposing a civil fine for a violation, the hearing officer may consider any or all of the following factors:

- A. The duration of the violation;
- B. The frequency or reoccurrence of the violation;
- C. The seriousness of the violation;
- D. The history of the violation;
- E. The violator's conduct after issuance of the notice of hearing;
- F. The good faith effort by violator to comply;
- G. The economic impact of the fine on the violator;
- H. The impact of the violation upon the community;
- I. Prior record of city code violations; or
- J. Any other factors appropriate to a just result.

Subd. 7. Civil Fines for Continuing Violations. The hearing officer may exercise discretion to impose a civil fine for more than one day of a continuing violation but only upon a finding that:

- A. The violation caused a serious threat of harm to the public health, safety or welfare; or
- B. The accused intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons for continuing violations must be in writing.

Subd. 8. Written Report of Hearing Officer. The decision of the hearing officer shall be in writing and contain findings of fact and conclusions of law. The written report shall be served on the parties by mail within 20 days of the last date of the hearing.

5.07. Judicial Review. An aggrieved party may obtain judicial review of the hearing officer's decision by writ of certiorari in the Olmsted County District Court.

5.08. Recovery of Civil Fines. Subdivision 1. If a civil fine is not paid within the time

specified, it will constitute:

- A. A lien on the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was found responsible for that violation; or
- B. A personal obligation of the violator, to be prosecuted by the City Attorney pursuant to section 5.10 subd. 1, in all other situations.

Subd. 2. A lien may be assessed against the property and collected in the same manner as taxes.

Subd. 3. A personal obligation may be collected by appropriate legal means.

Subd. 4. A late payment fee of 10 percent of the fine may be assessed for a 30-day period and for a 60-day period, or part thereof, that the fine remains unpaid after the due date.

Subd. 5. During the time that a civil fine remains unpaid, the provisions of section 85.25 apply to a license, permit or other city approval sought by the violator or for property under the violator's ownership or control.

Subd. 6. Failure to pay a fine is grounds for suspending or revoking a license related to the violation.

Subd. 7. The amount of the civil fine and the late payment fee must be paid in full. No partial payments of the civil fine or the late payment fee will be accepted.

5.09. Assessment of Civil Fines For Property-Related Violations. Subdivision 1. In addition to any other remedies provided in this chapter, an unpaid civil fine imposed for property-related violations may be assessed against:

- A. Property which was the subject matter or related to the subject matter of the civil fine; or
- B. Property which was the location of an activity, proposed use, delivery of city service or other circumstance which resulted in the civil fine.

Subd. 2. Prior to any assessment for an unpaid civil fine, the City Clerk shall seek voluntary payment of the fine by notifying the owner of the property in writing of the fine imposed.

Subd. 3. On or before the first day of October of each year, the unpaid civil fine and late fee, including the administrative charge due under subdivision 4 of this section, together with interest thereon at the maximum lawful rate permitted under Minnesota Statutes, Chapter 429, against said lot or parcel of land together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid.

Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and be provided an opportunity to be heard before the Common Council.

Subd. 4. An administrative charge of \$25.00 shall be due upon the mailing of the notice of the proposed assessment.

5.10. Criminal Penalties. Subdivision 1. The following are misdemeanors punishable in accordance with state law:

- A. Failure to pay the scheduled administrative fine, to request a hearing, or, after requesting a hearing, to pay the requesting party's estimated share of the cost of an administrative hearing within ten days after issuance of the administrative citation.
- B. Failure, without good cause, to appear at a hearing that was scheduled under section 5.06.
- C. Failure to pay a civil fine imposed by a hearing officer within 30 days after it was imposed, or such other time as may be established by the hearing officer, unless the matter is appealed under sections 5.07 or 5.08.

Subd. 2. If the final adjudication in the administrative penalty procedure is a finding of no violation, then the City may not prosecute a criminal violation in district court based upon the same set of facts. This does not preclude the City from pursuing a criminal conviction for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

5.11. State Administrative Citations. The authority to issue administrative citations for the enforcement of city ordinances provided by this chapter is separate and distinct from the authority to issue administrative citations for the enforcement of certain state law offenses provided by Minnesota Statutes, Section 169.999.

(3946, 11/2/09; 3960, 3/15/10; 3967, 5/17/10)